

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4626

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOSE ANTONIO NIEVES, a/k/a Antonio Perez,

Defendant - Appellant.

Appeal from the United States District Court for the Middle
District of North Carolina, at Durham. James A. Beaty, Jr.,
District Judge. (CR-03-42)

Submitted: April 29, 2004

Decided: May 3, 2004

Before LUTTIG, WILLIAMS, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David B. Freedman, WHITE & CRUMPLER, Winston-Salem, North Carolina,
for Appellant. Anna Mills Wagoner, United States Attorney, Robert
A.J. Lang, Assistant United States Attorney, Winston-Salem, North
Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Jose Antonio Nieves pled guilty to possession of 422.8 grams of cocaine base (crack) with intent to distribute, 21 U.S.C.A. § 841(a), (b)(1)(A) (West 1999 & Supp. 2003) (Count One), and to possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A) (2000). His plea agreement provided that he waived his right to appeal his sentence "on any ground, including any appeal right conferred by Title 18, United States Code, Section 3742(a)," excepting only claims of prosecutorial misconduct, ineffective assistance of counsel, a sentence in excess of the statutory maximum, and a sentence based on an unconstitutional factor. Nieves was sentenced to a term of 235 months imprisonment for the drug offense and a consecutive five-year term for the § 924(c) offense. He now seeks to appeal his sentence, contending that the district court erred in determining the amount of crack for which he was responsible. Based on Nieves' waiver of his appeal right, we dismiss the appeal.

A defendant may waive his right to appeal if the waiver is knowing and voluntary. United States v. Brown, 232 F.3d 399, 403 (4th Cir. 2000); United States v. Marin, 961 F.2d 493, 496 (4th Cir. 1992). The record here discloses that Nieves' waiver of his appeal right was knowing and voluntary. He does not claim that any of the exceptions apply.

We therefore dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED